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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiffs, Counter-defendant

v.

APPLE INC.,

Defendant, Counterclaimant

IN RE APPLE IPHONE ANTITRUST  
LITIGATION

DONALD R. CAMERON, *et al.*,

Plaintiffs,

v.

APPLE INC.,

Defendant

Case No. 4:20-cv-05640-YGR-TSH

Case No. 4:11-cv-06714-YGR-TSH

Case No. 4:19-cv-03074-YGR-TSH

**DECLARATION OF ETHAN DETTMER IN  
SUPPORT OF ADMINISTRATIVE MOTION  
TO FILE UNDER SEAL THE JOINT  
DISCOVERY LETTER BRIEF REGARDING  
EPIC'S OUTSTANDING DOCUMENT  
REQUESTS AND SUPPORTING EXHIBITS**

Hon. Thomas S. Hixson

Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential information, based on my personal experience representing Apple.<sup>1</sup> I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto. I submit this declaration in support of Plaintiff’s administrative motion to file under seal: Supporting Exhibits 1, 4, and 5 to the Joint Discovery Letter Brief Regarding Epic’s Outstanding Document Requests. *Epic*, Dkt. 297.

2. Although Plaintiff filed an Administrative Motion to File Under Seal the Joint Discovery Letter Brief Regarding Epic’s Outstanding Document Requests and Supporting Exhibits, *Epic*, Dkt. 297, Plaintiff stated that it “does not believe that” the documents “meet the standard for sealing,” *id.* at 2. This declaration therefore addresses the sealing of Exhibits 1, 4, and 5.

3. The request for relief is narrowly tailored and necessary to the confidentiality of information in certain documents described below.

4. In determining whether to permit documents to be filed under seal, courts in the Ninth Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in connection with motions for a determination on the merits of a claim or defense; and (2) the less-restrictive “good cause” test for sealing information in connection with non-dispositive filings. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause test applies, because the underlying dispute is non-dispositive.

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<sup>1</sup> Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to Local Rule 79-5. See, e.g., *In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1           5.       Apple operates in an intensely competitive marketplace. It occupies a unique position  
2 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate  
3 concerns that competitors will be quick to pounce on any release of Apple's highly sensitive,  
4 proprietary information in order to gain competitive advantage. As such, Apple takes extensive  
5 measures to protect the confidentiality of its proprietary information.

6           6.       The Court has "broad latitude" "to prevent disclosure of materials for many types of  
7 information, including, *but not limited to*, trade secrets or other confidential research, development, or  
8 commercial information." *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)  
9 (emphasis in original).

10          7.       Apple has carefully reviewed the joint discovery letter brief itself, as well as the  
11 numerous exhibits submitted in connection thereto. Apple offers narrow and carefully tailored  
12 redactions to protect its confidential business interests.

13          8.       Apple seeks to seal information regarding Apple's decisionmaking process and its  
14 response to certain developer activity on the App Store. Protection of that information is warranted  
15 to prevent competitors or counterparties from taking advantage of that process or response to obtain a  
16 strategic advantage against Apple in future negotiations or discussions.

17          9.       In addition to the competitive harms posed by public availability of these documents,  
18 public disclosure of this information would risk providing assistance to competitors and third parties  
19 seeking to unlawfully access or steal data. Apple takes many steps, and undertakes substantial efforts,  
20 to safeguard information—including its trade secrets and data of its customers and developers who use  
21 Apple's technology—and keeping those efforts confidential is important to their effectiveness.

22          10.       The information Apple seeks to protect is foundational to its business, and Apple has  
23 exerted great effort and undertaken substantial expense to protect such information. Apple has  
24 narrowly tailored its sealing request so as to maximize the public's access to court records without  
25 jeopardizing Apple's business interests.

Document	Redacted Material
Exhibit 1 to Joint Discovery Letter Brief Regarding Epic's Outstanding Document Requests	Page 7, lines 18–20
Exhibit 4 to Joint Discovery Letter Brief Regarding Epic's Outstanding Document Requests	Highlighted material on page 4
Exhibit 5 to Joint Discovery Letter Brief Regarding Epic's Outstanding Document Requests	Page 13, lines 6–8, 21–22

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on February 2, 2021, at San Anselmo, California.

/s/ Ethan Dettmer

Ethan Dettmer